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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,066	05/07/2001	Bruce A. Kehr	20010427	9510

20277 7590 07/28/2006

MCDERMOTT WILL & EMERY LLP  
600 13TH STREET, N.W.  
WASHINGTON, DC 20005-3096

EXAMINER
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NAJARIAN, LENA

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 38-49, 74, 75, and 80-82, drawn to customizing medical protocols, classified in class 705, subclass 3.
  - II. Claims 50-58 and 76-78, drawn to delivering medication, classified in class 604, subclass 500.
  - III. Claims 59-73 and 79, drawn to medical monitoring, classified in class 600, subclass 301.
2. The inventions are distinct, each from the other because of the following reasons:

The inventions are independent or distinct, each from the other because:

Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as patient record management, subcombination II has separate utility such as introducing or removing material from body, and subcombination III has separate utility such as monitoring physiological data. See MPEP § 806.05(d).
3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different

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classification and/or because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Conclusion***


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Ln*

In  
7-20-06

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER